

Electricity:
The Right To Choose --
Or The Right To Confuse?

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Written Testimony
House Commerce Energy and Power Subcommittee
Tim Leigh, Vice President of Sales
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Good morning. My name is Tim Leigh, and I am Vice President of Sales for DigiTech Solutions, an independent source of consulting and technology to both energy providers and energy consumers. On behalf of DigiTech, thank you for this opportunity to provide testimony to the House Commerce Energy and Power Subcommittee regarding the deregulation of the electric utility industry, relevant Federal legislation, and the customer's "right to choose."

I want to immediately make clear our view that deregulation, competition, and customer choice among electricity energy providers will be beneficial for the United States, the national economy, the industry and, most importantly, the customer. Indeed, the issue is not whether to "support or oppose" the concept of customer choice for electricity -- that question has long since ceased to be a matter of philosophical debate. The crux of the matter is now to be found in how that choice will be implemented, and what complementary role

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Federal legislation will have, as, state by state, the deregulation of electricity generation and transmission progresses.

It is important that this view be immediate and explicit, because there are, we believe, underlying and cautionary tales to be told.

The first is that deregulation is not nonregulation. In fact, deregulation will be more complicated, for providers and consumers alike, than the current monopolistic order, and “new orders” are not, left to their own devices, necessarily “better orders.”

The next is that, while deregulation will unarguably lead to intensified competition, competition is not inherently beneficial. Unfettered, free enterprise creates winners and losers, victors and vanquished, haves and have-nots. Unfettered, free enterprise can become unfair, even ruthless enterprise, and its benefits delivered disproportionately to the strong and influential. This is precisely why Federal legislation, as minimalist as possible, is desirable. There is much contemporary analysis that discusses “average” electricity bills and impressive “average” savings under deregulation. The fallacy of averages, though, is well captured in an old proverb: “Do not believe you can walk across a river because its average depth is four feet.”

Finally, deregulation of the electric utility industry is a genie that will never return to its bottle. And while we are convinced that the bottle should be opened (in fact, it is already more open than not), we would caution against the unbridled enthusiasm that frequently accompanies this liberation. Cause and effect are often more apparent than real. Just as the crowing rooster does not cause the sunrise (though it would seem so), the crowing of competition does not necessarily create universal, or equal, benefits.

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With these cautionary tales told, what is the appropriate role -- and dimension -of Federal legislation?

For those who see the glass as half, or more, full, there is no role: progress toward deregulation continues, often admirably, in some twenty states. From this perspective, "states rights" need not be constrained by Federal mandates. However, the straightforward arithmetic is that some thirty states are progressing toward electric deregulation glacially, if at all. And some have passed **contrarian** legislation that prevents, rather than promotes, any consideration of deregulation in the immediate future.

Any attempt to dramatically resculpt a monopolistic landscape that has existed for over ninety years will, by its nature, invite opposition. Those who represent -- and benefit from -- entrenched interests will predictably multiply that resistance. But the virtues of deregulation cannot be denied by those who can rush "lawyers and lobbyists" to the ramparts of a crumbling castle of monopoly and protected "service territories."

And so, the compelling need for Federal legislation is born.

Without such legislation, **deregulation** will continue to be an idea whose time has emphatically come. But it will be proceed, and be implemented, in an uneven, disproportionate pattern -- precisely the characteristics we all now agree are intolerable, and in fact have fueled the engine of deregulation.

As currently proposed, the House legislation regarding deregulation is admirably minimalist: it eliminates barriers to free enterprise, without creating substitute barriers.

But is this minimalist approach too extreme? We think it may be.

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The expertise of DigiTech Solutions is found in working with major industrial and commercial energy consumers, as well as with energy providers. With expert advisor assistance such as DigiTech provides, both large energy consumers and providers will prosper under deregulation.

But who will safeguard the interests of the smaller consumer: the retailer, and the residential customer?

It is at this intersection of deregulation and customer benefit that the role of Federal legislation is defined. The time-honored homily remains in effect: Government should do as little as **possible...but** as much as necessary.

What is the desired result of deregulation? That its undeniable benefits be shared equally among consumers, both large and small. “Minimalist” government must be defined not in terms of what is least required, but in terms of what is most equitable.

The overarching concern is that the “rank and file” energy customer will be denied the full benefits of electric energy deregulation. If utilities are granted, as seems likely, the prerogative of recovering “stranded costs” through customer rates, who will bear the brunt of that subsidy? Not, it would seem, major industrial and commercial customers, whose ability to apply massive leverage and new technologies will allow them to negotiate favorable energy contracts.

Within the deregulation process, there must be an explicit linking of interests among energy providers, large commercial and industrial customers, and smaller retail and residential users. This is both an ethical and a common sense imperative. If smaller customers feel they are being excluded from the benefits of deregulation, they will

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create their own special interest groups and consortiums in an attempt to achieve leverage. Those efforts may or may not be successful: but they will surely complicate, slow and even compromise the deregulation process. Retail and residential customers comprise the very population that makes the success of larger energy users possible: their rightful place in the competitive equation must be a priority in any Federal or state legislation.

As energy providers scramble to win customers and marketshare, smaller customers will be the target of massive promotional campaigns. To ensure that the customer's "right to choose" does not become the provider's "right to confuse," some uniform standards need to be in place. For example, the terms and conditions of energy purchases should be explicit and explained in clear, easy to understand language, much as consumer credit terms are now disclosed.

There are no technological barriers to an orderly and timely deregulation of the electric utility industry. There are, however, complex policy and political issues that must be addressed, ranging from stranded costs to the equitable use of low-cost, Federally owned generation resources such as the TVA and Bonneville. As the deregulation of the telecommunications industry has already demonstrated, these issues, as complex as they are, will be resolved through a combination of Federal and state legislation and, most importantly, the mechanisms of competition and free enterprise.

In its December 2, 1996 issue, **Business** Week magazine identified the likely "winners" and "losers" as deregulation proceeds. Winners include the economy, large industrial customers, Fortune 500 companies, and geographic areas that currently pay disproportionately high rates. Among the predicted losers, however, were residential customers and taxpayers.

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It is true that competition, by its Darwinian nature, separates winners and losers, and to a degree that is how it should be. But there is a difference between losers and victims. Legislation that above all else safeguards the legitimate interests of all electric providers and consumers will be both appropriate and welcome.

Thank you very much.

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